

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs October 11, 2006

**GRANVILLE PAYNE v. W. W. SCOTT DUBE ET AL.**

**Appeal from the Circuit Court for Davidson County**  
**No. 04C-1002     Marietta Shipley, Judge**

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**No. M2005-02696-COA-R3-CV - Filed on May 16, 2007**

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This appeal involves a pro se medical malpractice complaint filed against an orthopedic surgeon in the Circuit Court for Davidson County. After the patient took no action for more than one year, the trial court clerk notified him that his complaint would be dismissed if the case was not set for trial within thirty days. When the patient failed to set the case, the trial court dismissed his complaint. The patient then filed a motion to set aside the order of dismissal and requested additional time to retain counsel and to develop a factual basis for the complaint. The trial court declined to set aside the order of dismissal, and the patient appealed. We have determined that the trial court was fully justified in dismissing the complaint given the patient's multiple violations of the Tennessee Rules of Civil Procedure.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which PATRICIA J. COTTRELL and FRANK G. CLEMENT, JR., JJ., joined.

Granville Payne, Nashville, Tennessee, Pro Se.

Garrett E. Asher and Emily H. Wilburn, Nashville, Tennessee, for the appellee, W. W. Scott Dube.

Renee Levay-Stewart, Nashville, Tennessee, for the appellee, MidSouth Orthopedic Associates.

**OPINION**

**I.**

On April 4, 2004, Granville Payne filed a handwritten, two-sentence complaint for medical malpractice against W. W. Scott Dube, M.D. and MidSouth Orthopedic Associates (MidSouth) in the Circuit Court for Davidson County. Mr. Payne requested \$500,000 in damages. The complaint provided literally no details regarding the factual basis for Mr. Payne's claim, and process was neither issued nor served on either Dr. Dube or MidSouth.

For the next year, Mr. Payne took no further steps to prosecute the lawsuit. On May 11, 2005, the trial court clerk issued a notice informing Mr. Payne that his case would be dismissed unless he filed a motion to set the case for trial within the next thirty days. Mr. Payne did not file a motion to set the case for trial in the next thirty days. Accordingly, on June 9, 2005, the trial court ordered that the case be dismissed.<sup>1</sup>

Four days later, on June 13, 2005, Mr. Payne filed a motion to extend the one-year rule so that he would have time “to acquire legal counsel and to conduct further investigation to determine [the] negligence of the Defendants.” Over one month later, on July 22, 2005, Mr. Payne filed a motion to set aside the order of dismissal on the ground the case was dismissed before the thirty-day deadline set in the court’s notice had expired.

Following a hearing, the trial court entered a November 17, 2005 order denying Mr. Payne’s motion to set aside the order of dismissal. The court held the complaint failed to satisfy the requirements of the Tennessee Rules of Civil Procedure and that the one-year statute of limitations for medical malpractice claims had now run. Mr. Payne appealed. On July 20, 2006, this court entered an order denying Mr. Payne’s motion to appoint counsel to represent him on appeal in this civil case.<sup>2</sup>

## II.

Mr. Payne’s two-line complaint stated in its entirety as follows:

I Granville Payne, file suit against Dr. WW. Scott Dube and Mid. South Orthopaedic Associates, P.C. at Suite 410, 5651 Frist Blvd. Hermitage, Tn. 37076. For Medical Malpractice in the dollar amount of \$500,000.00 dollars five hundred thousand dollars.

and any third parties.

Tenn. R. Civ. P. 8.01 mandates that every complaint contain both “a short and plain statement of the claim showing that the pleader is entitled to relief” and “a demand for judgment for the relief the pleader seeks.” Mr. Payne met the second requirement by requesting an award of \$500,000 in damages. However, he made no attempt whatsoever to satisfy the first requirement either when he filed the complaint or for the next year and two months before the trial court entered the order of dismissal. Even pro se plaintiffs like Mr. Payne must comply with the Tennessee Rules of Civil Procedure. *Marceaux v. Thompson*, 212 S.W.3d 263, 267 (Tenn. Ct. App. 2006); *Young*

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<sup>1</sup>Mr. Payne makes much of the fact that the trial court entered the order dismissing the case on June 9, 2005, the twenty-ninth day following the issuance of the notice of the pending dismissal. This detail is of no consequence, given that Mr. Payne failed to file a motion to set the case for trial the day the order was issued or the next day.

<sup>2</sup>There is no absolute right to counsel in a civil case. *Memphis Bd. of Realtors v. Cohen*, 786 S.W.2d 951, 953 (Tenn. Ct. App. 1989).

*v. Barrow*, 130 S.W.3d 59, 63 (Tenn. Ct. App. 2003); *Hessmer v. Hessmer*, 138 S.W.3d 901, 903 (Tenn. Ct. App. 2003). Accordingly, the trial court did not err in dismissing Mr. Payne's complaint.

Moreover, Mr. Payne allowed the case to languish in the trial court for more than one year without doing anything to move it forward. When warned that dismissal of the case was imminent, he missed the trial court's thirty-day deadline to have the case set for trial. After the court dismissed the case as promised, Mr. Payne asked the court for even more time, not just to retain legal counsel, but to investigate whether there was a factual basis for his claim of medical malpractice against Dr. Dube or MidSouth in the first place.

Mr. Payne did not indicate in the complaint that his allegations of medical malpractice against Dr. Dube and MidSouth had a present evidentiary basis as required by Tenn. R. Civ. P. 11.02(3). By violating Tenn. R. Civ. P. 11.02(3), Mr. Payne risked not merely dismissal of his complaint, but also the imposition of monetary sanctions directly against him by the trial court. Tenn. R. Civ. P. 11.03(2). Were Mr. Payne not impecunious, a motion by Dr. Dube and MidSouth to recover the attorney's fees and other expenses they incurred in defending themselves would likely have followed.

Mr. Payne accused Dr. Dube and MidSouth of medical malpractice with no present evidence to support such a claim, failed to give them any indication of the alleged factual basis for his accusations for more than a year, and then asked the trial court for yet more time to come up with a factual basis for his claim. The trial court committed no error in attempting to put an end to Mr. Payne's abuse of the civil justice system.

### **III.**

We affirm the trial court's dismissal of the complaint and tax the cost of this appeal to Granville Payne for which execution, if necessary, may issue.

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WILLIAM C. KOCH, JR., P.J., M.S.